

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America

v.

Lee Kirk

Date of Original Judgment:

11/18/2009

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: 08-cr-232(11)

USM No: 14060-041

Pro se

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: _____

Amended Total Offense Level: _____

Criminal History Category: _____

Criminal History Category: _____

Previous Guideline Range: _____

Amended Guideline Range: _____

II. SENTENCE RELATIVE TO THE AMENDED GUIDELINE RANGE☐ The reduced sentence is within the amended guideline range.

☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a substantial assistance departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.

☐ The reduced sentence is above the amended guideline range.**III. ADDITIONAL COMMENTS**

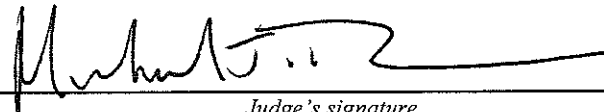
Although the Court concludes that the Fair Sentencing Act reduces Defendant's Offense Level, Defendant's guideline range remains unchanged. See U.S.S.G. § 5G1.1(b) ("Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence."). Defendant is not eligible a sentence reduction. See *United States v. Baylor*, 556 F.3d 672, 673 (8th Cir. 2009) ("A district court does not have the authority to grant a § 3582(c)(2) sentencing reduction if the relevant Guidelines amendment does not have the effect of lowering the defendant's applicable Guidelines range.").

Except as otherwise provided, all provisions of the judgment dated 11/18/2009 shall remain in effect.

IT IS SO ORDERED.

Order Date:

1-26-12



Judge's signature

Effective Date:

(if different from order date)

Chief Judge Michael J. Davis, U.S. District Court

Printed name and title